

House Bill 1433

By: Representatives Smith of the 131st, Manning of the 32nd, Lane of the 167th, and Drenner of the 86th

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 12 of the Official Code of Georgia Annotated, relating to conservation and
2 natural resources, so as to provide that certain persons are not aggrieved or affected by an
3 order or action of the director of the Board of Natural Resources; to provide a statement of
4 legislative intent; to amend provisions relating to the powers and duties of the Environmental
5 Protection Division of the Department of Natural Resources relative to rules and regulations
6 related to releases of hazardous waste, hazardous constituents, and hazardous substances; to
7 amend provisions relative to the powers and duties of the director of the Environmental
8 Protection Division of the Department of Natural Resources; to provide changes to the
9 determination of corrective actions; to provide that certain persons shall not be considered
10 to have contributed to a spill or release of hazardous substances; to provide exceptions for
11 liability for such releases; to provide for related matters; to repeal conflicting laws; and for
12 other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural
16 resources, is amended by striking in its entirety subparagraph (c)(3)(B) of Code Section
17 12-2-2, relating to the Environmental Protection Division of the Department of Natural
18 Resources, the Environmental Advisory Council, duties of the council and its members and
19 the director of the division, procedure for aggrieved persons, and inspections, and inserting
20 in lieu thereof the following:

21 "(B) Persons are not aggrieved or adversely affected by the listing of property in the
22 hazardous site inventory in accordance with Code Section 12-8-97, nor are persons
23 aggrieved or adversely affected by an order of the director issued pursuant to Part 2 of
24 Article 3 of Chapter 8 of this title, the 'Georgia Hazardous Site Response Act,' unless
25 or until the director seeks to recover response costs, enforce the order, or recover a

1 penalty for violation of such order; provided, however, that persons are aggrieved or
2 adversely affected if the director designates property as needing corrective action
3 pursuant to paragraph (8) of subsection (a) of Code Section 12-8-97, regardless of
4 whether the aggrieved or affected person owns such property. Any person aggrieved
5 or adversely affected by such designation shall be entitled to a hearing as provided in
6 Code Section 12-8-73."

7 SECTION 2.

8 Said title is further amended by inserting at the end of Code Section 12-8-91, relating to a
9 declaration of policy and legislative intent relative to management of hazardous waste, a new
10 subsection (c) to read as follows:

11 "(c) It is declared that the objective of this part is to protect against unsafe exposures of
12 human and ecological receptors to dangerous levels of hazardous wastes, hazardous
13 substances, and hazardous constituents. In the review, formulation, and adoption of any
14 rule or policy to implement this part, the board and the division shall choose alternatives
15 that do not impose excessive regulatory costs on any regulated party if such costs could be
16 reduced by a less expensive alternative that adequately protects against unsafe exposures,
17 including the use of institutional and engineering exposure controls."

18 SECTION 3.

19 Said title is further amended by striking subsection (b) of Code Section 12-8-93, relating to
20 powers and duties of the Board of Natural Resources, and inserting in lieu thereof the
21 following:

22 "(b) The board's rules and regulations shall include, but shall not be limited to, the
23 following:

24 (1) Rules and regulations governing the reporting of releases of hazardous wastes,
25 hazardous constituents, and hazardous substances, including rules and regulations
26 governing reportable quantities;

27 (2) Rules and regulations governing the investigation, ~~cleanup, and corrective action at~~
28 ~~sites where hazardous wastes, hazardous constituents, or hazardous substances have been~~
29 ~~disposed of or released regardless of the date when such disposal or release occurred,~~
30 ~~including rules and regulations establishing cleanup standards~~ of sites. Such rules and
31 regulations shall:

32 (A) Specify that to the extent the director requires a delineation of the horizontal and
33 vertical boundaries of ground-water contamination, such delineation shall be
34 determined in ground water above bedrock to the highest of detection limit

concentrations using detection limits normally utilized by environmental professionals for the performance of ground-water investigation work, federal primary or secondary maximum contaminant levels, if established, or naturally occurring background concentrations. If ground-water contamination extends into underlying bedrock, acceptable delineation shall include data points from up to three bedrock monitoring wells extending vertically into bedrock up to 50 feet unless measured concentrations of contaminants in bedrock indicate the presence of dense nonaqueous phase liquids in such bedrock, in which case the rules may authorize the director to require such additional delineation as is necessary to protect a ground-water resource;

(B) Specify that, to the extent the director requires a delineation of the horizontal and vertical boundaries of soil contamination, such delineation shall be conducted in unsaturated soil and shall delineate soil conditions to the highest of detection limit concentrations using detection limits normally utilized by environmental professionals for the performance of soil investigation work notification concentrations set forth in the rules, or soil background concentrations; and

(C) Provide for exceptions to investigation requirements where such requirements are technically practicable or where the cost of particular requirements substantially exceeds the benefits;

(3) Rules and regulations governing procedures for placement of sites on and removal of sites from the hazardous site inventory required under the provisions of Code Section 12-8-97. Such rules and regulations shall specify that any site for which a potentially responsible person demonstrates at any time that hazardous wastes, hazardous constituents, or hazardous substances are not present in quantities deemed reportable by rules and regulations of the board shall be removed from the inventory; provided, however, that such demonstration shall not be based solely on fencing to prevent access to the site;

(4) Rules and regulations governing corrective action at sites where hazardous wastes, hazardous constituents, or hazardous substances have been disposed of or released regardless of the date when such disposal or release occurred, including procedures and criteria for making a determination whether property requires corrective action pursuant to paragraph (8) of subsection (a) of Code Section 12-8-97 and cleanup standards. Such rules and regulations shall:

(A) Specify that an actual risk pathway of human exposure or ecological receptor must be demonstrated in order for corrective action to be required. Hypothetical exposures that cannot reasonably be demonstrated shall not be presumed;

1 (B) Consider, for the purpose of evaluating the adequacy of any proposed corrective
2 action, probable human exposures to source material or contaminated soil or ground
3 water, and where such exposures are unlikely or can be reasonably controlled through
4 engineering or institutional means, such means shall be considered acceptable
5 corrective action;

6 (C) Specify, for the purposes of evaluating corrective action alternatives, that relative
7 practicability and relative cost-effectiveness among alternatives shall be considered, and
8 proposed corrective action utilizing proposed innovative technologies or cost-saving
9 methods shall be encouraged; and

10 (D) Ensure that, for the purposes of establishing standards as to the performance of any
11 corrective action, the methodologies used to measure the achievement of such standards
12 are consistent with generally accepted scientific methodologies involved in setting such
13 standards. If standards are calculated based on average exposures across a site, then the
14 measurements regarding the achievement of that standard shall likewise reflect average
15 exposures across the site;

16 (5) Rules and regulations governing procedures for the filing in the deed records of the
17 superior courts of additional affidavits concerning property for which an initial affidavit
18 has been filed pursuant to Code Section 12-8-97; and

19 (6) Rules and regulations governing the waiver of hazardous waste management fees and
20 hazardous substance reporting fees as provided in subsection (i) of Code Section
21 12-8-95.1."

22 **SECTION 4.**

23 Said title is further amended by striking in its entirety paragraph (2) of subsection (a) of Code
24 Section 12-8-94, relating to powers and duties of the director of the Environmental Protection
25 Division, and inserting in lieu thereof the following:

26 "(2) To ensure that corrective action is taken in accordance with rules and regulations
27 established by the board for releases of hazardous wastes, hazardous constituents, or
28 hazardous substances into the environment that pose a present or future danger to human
29 health or the environment;"

30 **SECTION 5.**

31 Said title is further amended by striking subsection (a) of Code Section 12-8-96, relating to
32 corrective action upon release of hazardous wastes, hazardous constituents, or hazardous
33 substances; notice; administrative consent orders; and expenditure of funds from the
34 hazardous waste trust fund, and inserting in lieu thereof the following:

1 "(a) Whenever the director has reason to believe that ~~there is or has been~~ a release of
2 hazardous wastes, hazardous constituents, or hazardous substances into the environment
3 requires investigation or corrective action in accordance with rules and regulations
4 promulgated by the board, regardless of the time at which release of such hazardous wastes,
5 hazardous constituents, or hazardous substances occurred, and has reason to believe that
6 such release poses a danger to health or the environment, the director shall make a
7 reasonable effort to identify each person who has contributed or who is contributing to such
8 a release. The director shall then notify each such person in writing of the opportunity
9 voluntarily to perform voluntarily such investigation as is required by rules and regulations
10 promulgated by the board. If the director determines that corrective action is necessary, he
11 or she shall provide the opportunity for each person who has contributed or is contributing
12 to such a release voluntarily to perform corrective action in accordance with rules and
13 regulations promulgated by the board. If such person fails voluntarily to perform corrective
14 action, or if such person otherwise requests, the director may request any such person to
15 perform such corrective action under an administrative consent order entered into with the
16 director within such period of time as may be specified by the director in written
17 correspondence to the person. If the person fails or refuses to enter into an administrative
18 consent order with the director for the performance of corrective action within the period
19 of time specified by the director, the director may issue an order directed to any such
20 person. The order may direct that necessary corrective action be taken within a reasonable
21 time to be prescribed in the order. For sites that are determined, in accordance with rules
22 promulgated by the board, to exhibit reportable quantities solely for an on-site exposure
23 pathway, corrective action under this part shall be limited to soils and source material at
24 such site unless the director determines that corrective action for ground water is necessary
25 to prevent danger to human health or the environment. Site investigations and corrective
26 action shall not be the subject of any order under this part prior to the finalization of rules
27 specified under Code Section 12-8-93. The director may order interim actions at sites to
28 the extent necessary to protect against imminent endangerment to human health and the
29 environment until such rules are finalized."

30 SECTION 6.

31 Said title is further amended by striking subsections (a), (c), (e), and (f) of Code Section
32 12-8-96.1, relating to liability for cleanup costs, punitive damages, actions for recovery of
33 costs and damages, and claims for contributions, and inserting in lieu thereof, respectively,
34 the following:

1 "(a) Each and every person who contributed to a release of a hazardous waste, a hazardous
2 constituent, or a hazardous substance shall be jointly, severally, and strictly liable to the
3 State of Georgia for the reasonable costs of activities associated with the cleanup of
4 environmental hazards, including legal expenses incurred by the state pursuant to
5 subsection (a) of Code Section 12-8-96, as a result of the failure of such person to comply
6 with an order issued by the director. Any such person shall be so liable notwithstanding
7 the absence of the issuance of an order to such person pursuant to subsection (a) of Code
8 Section 12-8-96 if the director is unable to identify such person prior to the commencement
9 of clean-up action after making a reasonable effort to do so pursuant to such Code section,
10 or if such person contributed to a release which resulted in an emergency action by the
11 director and issuance of such an order would cause a delay in corrective action that could
12 endanger human health and the environment. The person may, in addition, be liable for
13 punitive damages in an amount at least equal to the costs incurred by the state and not more
14 than three times the costs incurred by the state for activities associated with the cleanup of
15 environmental hazards if such person failed to comply with an order of the director without
16 sufficient cause. Sufficient cause shall include an objectively reasonable belief that there
17 is a basis to assert lack of liability or existence of a defense set forth in this Code section
18 or an objectively reasonable belief that the director's order was inconsistent with law.
19 Costs and damages incurred by the state may be recovered in a civil action instituted in the
20 name of the director. All costs recovered by the state pursuant to this Code section shall
21 be deposited into the hazardous waste trust fund."

22 "(c) No person shall be liable for costs or damages pursuant to this ~~Code section~~ part, or
23 be subject to injunction to perform an order of the director pursuant to this part, if he or she
24 can show by a preponderance of the evidence that the release of a hazardous waste, a
25 hazardous constituent, or a hazardous substance was caused solely by:

26 (1) An act of God;

27 (2) An act of war;

28 (3) An act or omission of a third party other than an employee or agent of the person or
29 other than one whose act or omission occurs in connection with a contractual relationship,
30 existing directly or indirectly, with the person, if the person establishes by a
31 preponderance of the evidence that:

32 (A) He or she had no relationship with the third party nor exercised any control over
33 activities of the third party; and

34 (B) He or she took precautions against foreseeable acts or omissions of any such third
35 party and the consequences that could foreseeably result from such acts or omissions;

36 or

(4) Any combination of paragraph (1), (2), or (3) of this subsection.

(c.1) Penalties under this article may be applied to a person who fails to comply with an order of the director pursuant to this part if such person lacked sufficient cause for such failure to comply. Sufficient cause shall include an objectively reasonable belief that there is a basis to assert a lack of liability or existence of a defense set forth in this Code section or an objectively reasonable belief that the director's order was inconsistent with law."

"(e) During or following the undertaking of any voluntary or required investigation, cleanup, or corrective action pursuant to this part, any person may seek contribution from any other person who has contributed or is contributing to any release of a hazardous waste, a hazardous constituent, or a hazardous substance. Such claims for contribution shall be governed by the law of this state. In resolving contribution claims, the court may allocate costs among liable parties using such equitable factors as the court determines to be appropriate. In any action filed by the director for the recovery of costs and damages pursuant to this Code section, any third-party claim for contribution may, upon the motion of the director, be severed and maintained as a separate action.

(f) A person who has voluntarily agreed to perform corrective action pursuant to an administrative consent order with the director shall not be liable for claims for contribution regarding matters addressed in the administrative consent order. To encourage settlements and to provide maximum possible contribution protection available under state and federal law, any such administrative consent order shall be deemed a settlement both under this part as well as a settlement of state claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601, et seq.). Such administrative consent order does not discharge any other person who has contributed or is contributing to a release of hazardous wastes, hazardous constituents, or hazardous substances unless the terms of the administrative consent order so provide, and the other persons remain liable for any corrective action deemed necessary by the director but not agreed to in the administrative consent order."

SECTION 7.

Said title is further amended by inserting immediately following Code Section 12-8-96.3 a new Code section to read as follows:

"12-8-96.4.

(a) A person who owns or operates real property which:

(1) Is contiguous to property on which a release has occurred or is threatened to occur;
and

(2) Is or may be contaminated by the release or threatened release of a hazardous waste, hazardous substance, or hazardous constituent from such contiguous property shall not be considered to be a person who has contributed or who is contributing to such release and shall not be required to undertake any action with respect to such release or be liable for any costs or damages under this part for such release.

(b) The provisions of subsection (a) of this Code section shall apply only to a person who:

(1) Did not cause, contribute, or consent to the release or threatened release;

(2) Is not either:

(A) Liable, or affiliated with any other person who is liable, for such release through any direct or indirect familial relationship or any contractual, corporate, or financial relationship other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services; or

(B) The result of a reorganization of a business entity that was potentially liable; and

(3) Provides full cooperation and access to persons that are authorized to conduct investigations and corrective action with respect to such a release.

(c) Nothing in subsection (a) of this Code section shall relieve a person of any liability that may exist with respect to releases that originate on property owned or operated by such person.

(d) A person shall not be considered a person who contributed to or is contributing to a release on adjoining property not owned or operated by such person based solely on a separate and unrelated release originating on property owned or operated by such person."

SECTION 8.

All laws and parts of laws in conflict with this Act are repealed.